

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WENJIA ZHAI, Individually;

Plaintiff,

vs.

CENTRAL NEBRASKA ORTHOPEDICS &
SPORTS MEDICINE, P.C., a domestic
professional corporation; PHILIP CAHOY,
M.D., an individual; SURGERY GROUP
OF GRAND ISLAND, LLC, a domestic
limited liability corporation; STEVEN G.
SCHNEIDER, M.D., an individual; THE
PHYSICIAN NETWORK, a non-profit
domestic corporation; and SALAM
SALMAN, M.D., an individual;

Defendants.

4:16CV3049

ORDER

Plaintiff has filed a motion to reconsider, ([Filing No. 139](#)), the court's prior order excluding the expert testimony of Daniel L. Menkes, M.D., ([Filing No. 138](#)).

Under Eighth Circuit law, motions to reconsider “serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence.” [Arnold v. ADT Sec. Servs., Inc.](#), 627 F.3d 716, 721 (8th Cir. 2010) (quoting [Hagerman v. Yukon Energy Corp.](#), 839 F.2d 407, 414 (8th Cir. 1988)). “A motion for reconsideration is also not the appropriate place to “tender new legal theories for the first time.” [Id.](#) Accordingly, a motion for reconsideration should be denied absent “(1) a showing of manifest error in the prior ruling; or (2) a showing of new facts or legal authority, neither of which could have been brought to the court's attention earlier with reasonable diligence.” [Activision TV](#),

[Inc. v. Bruning](#), 8:13CV215, 2014 WL 1350278, at *1 (D. Neb. Apr. 4, 2014) (collecting cases).

The court has reviewed Plaintiff's arguments and the additional evidence submitted on the motion to reconsider. Plaintiff offers no new legal theories. As to evidence, Plaintiff has filed a redacted version of the same expert witness report previously submitted to the court, along with an affidavit explaining Plaintiff's counsel was acting in good faith. Counsel states his failure to timely disclose Dr. Menkes' opinions was not an intentional attempt to violate the Federal Rules and the court's scheduling order, or to delay or disrupt case progression.

Plaintiff's motion to reconsider presents no new evidence, argument, or other reason justifying relief from the court's prior order. ([Filing No. 138](#)). See [Fed. R. Civ. P 60\(b\)](#).

Accordingly,

IT IS ORDERED that Plaintiff's motion to reconsider, ([Filing No. 139](#)), is denied.

January 28, 2018.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge